

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF NEW JERSEY  
3                   Civil No. 10-cv-2734(CCC)(JBC)

4           - - - - - - - - - - -x  
5   IN RE BIOGEN '755 PATENT       :   TRANSCRIPT OF PROCEEDINGS  
6   LITIGATION                       :       - Excerpt of Trial -  
7   - - - - - - - - - - -x

8                                   Newark, New Jersey  
9                                   January 19, 2018

10   B E F O R E:

11                               THE HONORABLE CLAIRE C. CECCHI,  
12                               UNITED STATES DISTRICT JUDGE

13   Pursuant to Section 753 Title 28 United States Code, the  
14   following transcript is certified to be an accurate record as  
15   taken stenographically in the above entitled proceedings.

16   S/WALTER J. PERELLI

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1 January 19, 2018

2 (Excerpt of proceedings - colloquy between Court and  
3 Counsel following dismissal of Prospective Jurors for the  
4 weekend.)

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6 THE COURT: There is no Government shutdown, but thank  
7 you, that was an excellent question. It's on everyone's mind,  
8 I do understand that.

9 But as far as I know we will be reporting to work, so  
10 then you will be coming in for jury duty. If anything changes,  
11 we will let you know. And in addition to that, Jacquie is our  
12 main contact here in terms of determining what happens with you  
13 if you have any difficulties of any sort or if you have any  
14 questions, so she is here to give you her cell phone number for  
15 any types of communications.

16 All right. With that, anything from counsel before I  
17 allow our jurors to head off and enjoy the weekend?

18 MR. BARSKY: No, your Honor.

19 MR. GROOMBRIDGE: Nothing from us, your Honor.

20 THE COURT: Thank you.

21 Again, thank you so much for coming in today, for  
22 being attentive and answering our questions. It is a privilege  
23 to work with you through this issue, and I look forward to  
24 seeing you on Monday morning. So thank you very much to each  
25 and every one of you.

1           Just go straight downstairs, check out, and then we'll  
2 see you Monday morning by 9:30. Thank you.

3           Take care, everyone. Thank you so much.

4           (The Prospective Jury leaves the courtroom.)

5           THE COURT: Thank you. Have a good weekend, everyone.  
6           Counsel, anything further that we need to discuss at  
7 this point?

8           MR. GROOMBRIDGE: Not from us, your Honor.

9           MR. BARSKY: Your Honor, we have a couple of  
10 outstanding items still on the preliminary jury instructions.  
11 I thought what better way to spend a Friday night than to try  
12 and get -- but they're small items and I think it probably  
13 would make sense to --

14           THE COURT: Do you think you have the ability to go  
15 through them and work them out, or you need some assistance  
16 from me?

17           MR. BARSKY: I think we just need a ruling. I think  
18 that the two issues that I can think of that remain have been  
19 discussed and --

20           THE COURT: What are the issues? I thought you had  
21 resolved everything.

22           MR. BARSKY: I thought there was an issue as to the  
23 wording on "specific intent for induced infringement" versus --  
24 I think you were objecting to the word "specific intent" --

25           THE COURT: Do you want to take a look at them and

1       then --

2               MR. STONE: Can we have 60 seconds to confer? You  
3       don't have to leave the bench.

4               THE COURT: Why don't do you that. Why don't you look  
5       at it for five minutes and let me know whether it's actually  
6       something that is still out there. Maybe it was out there and  
7       maybe you can still work on it a little bit, or maybe it's been  
8       resolved; I don't know.

9               MR. STONE: Your Honor, I haven't had a chance to  
10       confer with Ms. Ranney. She's been engaged in the jury  
11       selection process.

12              THE COURT: I'll get my copy and look at it too. So  
13       why don't you do that and I'll come back.

14              MR. BARSKY: Thank you, your Honor.

15              MR. MARINO: Thank you, your Honor.

16              THE COURT: Okay.

17              (A recess is taken.)

18              (Proceeding resume.)

19              THE COURT: It appears we have an agreement with  
20       respect to the preliminary jury instructions. Is that correct?

21              MS. RANNEY: Christine Ranney for EMD Serono and  
22       Pfizer.

23              Yes, that is correct, your Honor.

24              THE COURT: Mr. Stone?

25              MR. STONE: Yes, that is correct, your Honor.

1           THE COURT: Thank you. Let's hear what the agreement  
2 is.

3           MS. RANNEY: So, on page -- there are two outstanding  
4 issues. On page 11, section Roman Numeral II, Inducement of  
5 Infringement, factor two will read:

6           (Reading) The party took action at the time the '755  
7 Patent issued specifically --

8           (Mr. Stone confers with Ms. Ranney off the record.)

9           MS. RANNEY: I'm sorry. Let me start over.

10          (Reading) The party took action after the time the  
11 '755 Patent issued specifically intending to cause the  
12 infringing acts by healthcare professionals and/or patients.

13          And that agreement is for the preliminary instructions  
14 only without prejudice to revisiting the issue in the final  
15 instructions.

16          THE COURT: Thank you. Good.

17          MS. RANNEY: The second issue was at page 14, the  
18 first paragraph, the last sentence will read:

19          (Reading) To anticipate the invention, all of the  
20 requirements of the claim must have been disclosed, either  
21 stated expressly or implied to a person having ordinary skill  
22 in the art and the technology of the invention, so that looking  
23 at the one prior art reference that person could make and use  
24 the claimed invention.

25          That agreement is also with respect to the preliminary

1 instructions only, without prejudice to revisiting the issue in  
2 the final instructions.

3 THE COURT: Is that agreed to.

4 MR. STONE: That is agreed to, your Honor.

5 THE COURT: Excellent.

6 MS. RANNEY: And if it's all right with your Honor,  
7 the plan to be would submit the final preliminary instructions  
8 on ECF tomorrow morning, or if your Honor would prefer tonight,  
9 we could do that too.

10 THE COURT: No, tomorrow would be fine, that's good,  
11 and just so long as we have them so that they're proof-read and  
12 ready to go for Monday morning and there are no issues  
13 remaining. Because I'd like to be able to stick to our  
14 schedule. If we have our jurors we can go ahead with the  
15 video, we can go ahead with the preliminary instructions and  
16 then you can finish out the day going through your openings,  
17 and then indeed get our first witness on with the direct and  
18 the cross, because our hope is to at least finish that witness.  
19 And it's a lot to do in that day, so we definitely need these  
20 preliminary jury instructions to be completed and fully agreed  
21 to by that point.

22 And I believe they are fully agreed to at this point.  
23 Correct?

24 MR. STONE: They are fully agreed to, your Honor. And  
25 as much as it is my preference always to delete footnotes,

1       there is no footnote I look forward to deleting more than the  
2       ones that says, "Disputed instructions are set forth in blue  
3       and green." There will be no more of them.

4               (Laughter.)

5               THE COURT: Thank you. Thank you.

6               And, Ms. Ranney, from your perspective you're in full  
7       agreement with the preliminary jury instructions as well at  
8       this point?

9               MS. RANNEY: Yes, your Honor.

10              THE COURT: Excellent. So it just comes down to  
11      correcting the document and sending it in to us.

12              MR. STONE: That's correct, your Honor.

13              THE COURT: Beautifully done. I really appreciate it.  
14      Thank you.

15              Anything else before we close for today?

16              MR. BARSKY: Well, since your Honor is in such a good  
17      mood --

18              THE COURT: You're testing it now.

19              (Laughter.)

20              MR. BARSKY: I was completely transparent about the  
21      fact, your Honor.

22              I just wanted to note that we don't need a resolution  
23      of the clarifications that we raised last night in chambers  
24      before the trial actually commences with opening statements,  
25      but the sooner obviously we know what those rules are, the



1 better.

2 THE COURT: I will take a look at them.

3 MR. BARSKY: Thank you so much.

4 THE COURT: And also I think Biogen was going to be  
5 looking at them as well.

6 MR. GROOMBRIDGE: That's correct, your Honor. I think  
7 that the process here is that in parallel with your Honor  
8 looking at them we will confer further and we could revisit  
9 that. But I agree with Mr. Barsky, we don't need it before  
10 opening.

11 THE COURT: All right. And then, you know what, if  
12 you work something out in terms of, oh, it's not going to  
13 impact us, it doesn't really matter, you can discuss that and  
14 let me know what actually is meaningful to you at a certain  
15 point after your discussions.

16 MR. BARSKY: We will do that, your Honor.

17 THE COURT: Excellent. Anything else?

18 MR. GROOMBRIDGE: Not from us.

19 MR. BARSKY: Have a great weekend, your Honor.

20 THE COURT: Thank you.

21 MR. BARSKY: Same to the Court and staff for enduring  
22 us.

23 THE COURT: Thank you to the staff and thank you for  
24 Walter for always doing it no matter what the hour. So thank  
25 you.

1           And to Jacquie and Ashley, thank you as well. Well  
2     done.

3           Anyway, folks, thank you very much. It was a very  
4     productive day and I appreciate your input on everything.

5           MR. BARSKY: Thank you.

6           THE COURT: Have a good weekend. Get some sleep.  
7     We'll see you on Monday morning.

8           Take care, everyone.

9           (At 5:40 p.m., an adjournment is taken to Monday,  
10    January 22, 2018, at 9:30 a.m.)

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